IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O. O. C. J.

WRIT PETITION NO. 14 OF 2002

Dilip Vasant Shinde. ...Petitioner.

Versus

Brihanmumbai Municipal Corporation & Ors. ...Respondents.

.....

Mr.Santosh Shetty i/b. M.P. Vashi & Associates for the Petitioner.

Mrs. A.R. Josh for the Respondents.

.....

CORAM : DR. D.Y. CHANDRACHUD, J.

March 11, 2005.

ORAL JUDGMENT:

A shop (Shop No.55) in the Municipal Market known as Hirachand Desai Municipal Market at H. D. Road, Ghatkopar, Mumbai, was allotted to the Petitioner in 1988 on licence. The

licence which was issued under Sections 401, 411 and 479 of the Mumbai Municipal Corporation Act, 1888, was subject to certain terms and conditions. The stallage charges at the rate of Rs.765/- per month were liable to be paid in respect of each shop allotted to persons in the market. The trade which was registered by the Petitioner in his application for licence was that of plumber. Stallage charges for the period from January 1997 were not paid by the Petitioner in breach of the licence conditions. Under the conditions of licence, the licensee was required to pay in advance the amount payable for each month within the first 15 days of the month. The licensee was required to obtain a receipt duly signed by the Assistant Superintendent of Markets for every payment. The licence conditions specified that upon breach of the licensee to pay stallage charges within the period specified, the licence would be cancelled; upon which the licensee would have to cease to enter upon the stall or shop. Since charges for the period from January 1997 were not paid, a notice dated 11th October 1999 was served upon the Petitioner calling upon him to pay the outstanding dues. This was followed by a

reminder dated 18th October 1999. Since no payment was made, it is stated in the affidavit in reply filed by the Assistant Superintendent of Markets of the Municipal Corporation that the Superintendent of Markets prepared a report which was forwarded to the Deputy Municipal Commissioner, Zone-II. The DMC (Zone -II) accorded sanction to revoke the licence of the Petitioner for non-payment of charges and for violating the conditions of licence. A notice to show cause was issued to the Petitioner and on 16th December 1999 a further notice came to be issued to the Petitioner to explain as to why the licence should not be revoked for non-payment of stallage charges. There was admittedly a default on the part of the Petitioner in paying his outstanding dues. On 16th October 2000 the licence was cancelled for breach of the conditions of licence and possession of the shop was taken over by the Municipal Corporation on 28th November 2000.

The Municipal Corporation has stated in its affidavit in reply has stated that the Petitioner had let out the shop to a Credit Society

and on 15th August 2001, the Corporation has received a letter from the Administrator of Ganeshkrupa Credit Society informing it that the office of the Society is situated in the shop which had been allotted to the Petitioner by the Municipal Corporation. This fact has been suppressed from the petition.

2. Subsequently, on a representation by the Petitioner dated 28th November 2000 praying for the restoration of the revoked licence, the Assistant Superintendent of Markets informed the Petitioner on 27th March 2001 that in accordance with a policy decision taken by the Corporation governing the restoration of licences, the Petitioner would have to pay charges at the rate of 75% of the market rate prevailing in the Ghatkopar (West) area. The Petitioner was consequently required to pay an amount of Rs.5,52,938/-. These proceedings were instituted under Article 226 in order to challenge the termination of the licence and the decision of the Assistant Superintendent of Markets calling upon the Petitioner to pay an amount of Rs. 5.52 lakhs for the restoration of the licence.

3. This petition was admitted on 8th October 2001. On 16th April 2002 in a Notice of Motion taken out by the Petitioner, the Court Receiver was appointed as Receiver in respect of the premises of the shop. The Petitioner was directed to pay to the Municipal Corporation an amount of Rs.2 lakhs subject to which the Receiver was directed to appoint the Petitioner as his agent without royalty or security. However, the Petitioner was directed to pay monthly compensation in accordance with the resolution of the Standing Committee. The Petitioner is stated to have paid an amount of Rs.2 lakhs to the Municipal Corporation. In so far as the subject matter of this petition is concerned, it is clear from the annexures to the petition that there was indeed a default on the part of the Petitioner in paying the outstanding dues. The Petitioner was an allotter of premises in a Municipal Market and as a licensee was governed by the terms and conditions of the licence. The Municipal Corporation, it must be noted, has not acted arbitrarily. Several notices were issued to the Petitioner calling upon him to pay the outstanding dues on account of

stallage charges. The termination of the licence took place only after the Petitioner, despite several notices, failed to pay the outstanding dues. The order of termination dated 16th October 2000 was preceded by notices of demand as well as by a show cause notice dated 11th January 2000 to which a reference is contained in the order of termination. The Petitioner has in fact, admitted in his letter dated 7th April 2001 that he had been unable to pay the monthly rent since January 1997. The Municipal Corporation has stated in its affidavit in reply that it was found that though the Petitioner had in his application for the grant of a licence disclosed his trade as that of a plumber, the shop has been unauthorisedly handed over to a Credit Society which in its letter dated 11th August 2001 informed the Corporation of the functioning of its office therein. There was, therefore, clearly a breach of the conditions of licence. The statement in the reply of the Corporation that there was an unauthorised transfer of the premises to a credit Society has not been controverted by the Petitioner. In these circumstances, particularly in the area of contractual relations between the Petitioner

and the Municipal Corporation, it is not possible for the Court to come to the conclusion that the action of the Corporation in terminating the licence is arbitrary, contrary to law or that it is in any manner violative of the fundamental rights of the Petitioner. The Municipal Corporation has in accordance with its policy guidelines demanded an amount of Rs.5,52,938/- as a condition for the restoration of the licence. Having regard to these facts, in the present case, the exercise of writ jurisdiction is clearly not called for with respect to an adjudication of the amount demanded from the Petitioner as a condition for restoration. The contractual relationship of licensor and licensee has been validly terminated for a breach of licence conditions. The Petitioner cannot compel the Corporation to restore the licence. The offer for restoration made by the Corporation has to be accepted or rejected by the Petitioner as it stands. The Court having found that the action of the Corporation in terminating the licence is justified, a writ of Mandamus cannot be issued to compel the Corporation to restore the licence on terms other than those imposed under the policy of the Corporation, framed in accordance with law. At the

interim stage, the Petitioner was appointed as an agent of the Receiver subject to a deposit of an amount of Rs.2 lakhs. In the event that the Petitioner desires to obtain the benefit of the offer of restoration of the licence, there can be no gainsaying the fact that the balance as demanded by the Municipal Corporation must be paid. In my view, the ends of justice would be served if a reasonable opportunity is granted to the Petitioner to pay the remaining amount. The Petitioner shall pay the remaining amount which is due and payable to the Corporation in monthly instalments of Rs.7500/-. This will be in addition to the monthly charges which are payable by the Petitioner in accordance with the applicable rules and regulations of the Municipal Corporation. The Petitioner shall pay interest to the Municipal Corporation computed at the rate of 6% p.a. on the balance of the dues that is payable. In the event that there is any default on the part of the Petitioner in paying the instalments as directed by this Court, the Court Receiver shall forthwith hand over vacant possession of the premises to the Municipal Corporation. Upon the Municipal Corporation certifying that the entire amount has been paid, the Court

Receiver shall stand discharged and the licence shall stand restored to the Petitioner in terms of the decision of the Municipal Corporation dated 27th March 2001. The Petition is accordingly disposed of in these terms. No order as to costs.

.....